

FILED

NOV 16 2005

RICHARD W. WIERING
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF
AMERICA,

Plaintiff,

v.

ABEL FUERTE

No. CR05-00343 JF

ORDER STAYING
DRUG/ALCOHOL TESTING AND
WARRANTLESS SEARCH
REQUIREMENTS IN PRETRIAL
RELEASE CONDITIONS

IT IS HEREBY ORDERED, in light of the recent decision by the Court of Appeals for the Ninth Circuit in *United States v. Scott*, 424 F.3d 888 (9th Cir. September 9, 2005), that the provisions of any order (including any pretrial bond) previously entered by any judge of this court that subjected a defendant whose case has not been resolved (by trial, motion, or change of plea) to random tests for substance abuse (drugs or alcohol) and/or to warrantless searches are STAYED.

Defendants who have been convicted (by guilty plea or trial) and who are awaiting sentence or self-surrender remain subject to *all* release conditions previously imposed, including random testing for substance abuse and/or warrantless searches.

Substance abuse treatment programs and half-way houses (e.g., Cornell


1 Corrections) fix the terms and conditions under which persons may be admitted to
2 and remain in their programs. These programs may expel or terminate any person
3 who refuses to comply with or who violates the terms and conditions set by the
4 programs. If a defendant who was ordered by the court, as a condition of pretrial
5 release, to participate in a substance abuse program or to reside in a half-way house,
6 is terminated or expelled from the program, it will be necessary for the court to
7 reconsider whether that defendant may remain out of custody (on a changed set of
8 conditions) pending the disposition of the criminal proceedings.

9 Persons who signed bonds as SURETIES and/or who agreed to serve as
10 CUSTODIANS for a defendant who was subjected, under the terms of the bond, to
11 substance abuse testing and/or warrantless searches, are hereby NOTIFIED THAT
12 THE TERMS OF THE BOND HAVE BEEN CHANGED as reflected above.

13 IT IS FURTHER ORDERED that the Pretrial Services Office shall mail a copy
14 of this ORDER AND NOTICE to all sureties and/or custodians on bonds whose
15 provisions for substance abuse testing and/or warrantless searches are stayed by this
16 ORDER.

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18 IT IS SO ORDERED.

19 Dated: November 15, 2005.

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21 
Richard Seeborg
U.S. Magistrate Judge
United States District Court

22 Copies to: Pretrial, U.S. Attorney,
23 Office of Public Defender.

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file: order and notice re changing release conditions